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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

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THE PEOPLE,

Plaintiff and Respondent,

v.

LAWRENCE GREGORY JOHNSON,

Defendant and Appellant.

C070202

(Super. Ct. No. CR113129)

Appointed counsel for defendant Lawrence Gregory Johnson asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). We conclude the judgment must be modified to include imposition of certain mandatory fines and fees. We will modify the

judgment, affirm the judgment as modified, and direct the trial court to amend and correct the amended abstract of judgment.<sup>1</sup>

## BACKGROUND

Officer Alicia Slater with the Yolo (County) narcotic enforcement team (YONET) began conducting surveillance on the apartment home of Clay Logan in July 2011. In a 30-minute period she saw two people go inside the apartment, stay for two-to-four minutes, then leave. She also saw defendant leave the apartment, retrieve something from a tan Dodge, and return to the apartment.

The next day, Officer Slater saw the same Dodge parked outside Logan's apartment. She saw four people go inside Logan's apartment, stay only a few minutes, and leave. She also saw a woman leave the apartment with defendant and walk with him to the tan Dodge where they executed a "hand-to-hand" exchange of something Officer Slater could not see.

Yolo County law enforcement subsequently entered Logan's apartment with a search warrant. Logan, his girlfriend Tracy Dixon, and defendant were inside the apartment. On a table next to defendant, law enforcement officials found a digital scale, two pieces of slate, a razor blade, and two empty medicine bottles. The razor blade and pieces of slate both had a "white chalky substance" on them. Officer Slater also found a black bag near defendant's foot. Inside the bag she found two pieces of cocaine base, one

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<sup>1</sup> Because the law is clear, we will modify the judgment without further briefing in the interests of judicial economy. (*People v. Talibdeen* (2002) 27 Cal.4th 1151, 1153–1157; *People v. Smith* (2001) 24 Cal.4th 849, 851–854; *People v. Turner* (2002) 96 Cal.App.4th 1409, 1413–1416.) Any party aggrieved may petition for rehearing.

weighing 7.1 grams and the other weighing .3 grams.<sup>2</sup> In Logan's bedroom, law enforcement found four used glass pipes commonly used to smoke cocaine base.

Law enforcement also searched the tan Dodge parked outside Logan's apartment. The car was registered to defendant. Inside the car's glove compartment, law enforcement officials found \$446 in cash on top of defendant's wallet.

After advising defendant of his rights, Officer Slater asked defendant what he was doing in Logan's apartment. Defendant said he was there to pick up his flashlights. Officer Slater told defendant she did not believe him, that she knew he was there selling cocaine base. Defendant denied selling or using drugs. After further questioning, however, defendant said he was at Logan's to smoke crack. When asked about the money in his car, defendant said the car belonged to his wife.

Officer Slater searched defendant's cell phone and found several text messages indicating to her that defendant was selling cocaine base.

At trial, Logan testified that he had been buying crack cocaine (cocaine base) from defendant for about six months before they were arrested. Logan explained how he used to go looking for defendant in order to buy the drugs, but then defendant began selling drugs to other people from Logan's apartment. In exchange for using Logan's apartment, defendant gave Logan free crack cocaine.

Officer Slater qualified as an expert in the possession for sale of cocaine base. Based on all the facts presented, she opined that the cocaine base was possessed for the purpose of sale.

Defendant's wife testified on his behalf. She claimed the \$446 cash found inside defendant's car was money she had given him to pay their PG&E and SMUD bills.

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<sup>2</sup> A criminologist later testified the rocks weighed 6.64 grams and .29 grams respectively, and that it was not unusual for different agencies to measure slightly different weights.

A jury found defendant guilty of possessing cocaine base for the purpose of sale (Health & Saf. Code, § 11351.5) and conspiracy to transport, sell, or distribute a controlled substance (Pen. Code, § 182, subd. (a)(1)/ Health & Saf. Code, § 11352, subd. (a)). In addition, the trial court found true an allegation that defendant had a prior conviction for possessing cocaine base for sale. (Health & Saf. Code, § 11351.5.)

The trial court sentenced defendant to an aggregate term of eight years to be served in county jail, awarded him 392 days of presentence custody credit (196 actual and 196 conduct), and ordered him to pay a \$500 restitution fine (Pen. Code, § 1202.4).

Appointed counsel filed an opening brief setting forth the facts of the case and asking this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing the opening brief. More than 30 days elapsed and we received no communication from defendant.

## DISCUSSION

Based on our review of the record, we conclude the judgment must be modified to include imposition of certain mandatory fines and fees, and the amended abstract of judgment must be amended and corrected.

The oral imposition of sentence constitutes the judgment in an action. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185 (*Mitchell*); *People v. Zackery* (2007) 147 Cal.App.4th 380, 387-388 (*Zackery*).) Thus, the oral rendition of judgment must specify the amounts and the statutory bases for all fines and fees that the trial court imposes (*People v. High* (2004) 119 Cal.App.4th 1192, 1200 (*High*)), or at minimum include an incorporation of an accurate written breakdown by reference. And because the abstract of judgment is the order that executes the judgment by transferring defendant into custody and authorizing the performance of its provisions (*Mitchell, supra*, 26 Cal.4th at p. 185; *In re Black* (1967) 66 Cal.2d 881, 889-890), it must be an accurate summary of the judgment, including all fines and fees. (*High, supra*, 119 Cal.App.4th at

p. 1200; *Zackery*, *supra*, 147 Cal.App.4th at pp. 387-388; *People v. Sanchez* (1998) 64 Cal.App.4th 1329, 1332; *People v. Hong* (1998) 64 Cal.App.4th 1071, 1080.)

#### A

When it came time to impose fines and fees at sentencing, the trial court orally imposed a \$500 restitution fine pursuant to Penal Code section 1202.4. But it did not orally impose and stay the mandatory matching parole revocation fine, which in this case must be in the amount of \$500 (Pen. Code, § 1202.45), and the parole revocation fine is not included in the amended abstract of judgment.

The judgment must be modified, and the amended abstract of judgment must be amended, to include the mandatory \$500 parole revocation fine.

#### B

The amended abstract of judgment nonetheless includes other mandatory fees that were not orally imposed by the trial court. It includes the mandatory court security fee (Pen. Code, § 1465.8) in the amount of \$80, and the mandatory court facilities assessment (Gov. Code, § 70373) in the amount of \$60.

The judgment must be modified to include these mandatory fees.

The amended abstract of judgment also identifies a \$760 fine which includes a single \$50 lab fee (Health & Saf. Code, § 11372.5, subd. (a)) and related assessments. But Health and Safety Code section 11372.5 requires imposition of a lab fee “for each separate offense.” Here, the trial court should have orally imposed two \$50 lab fees, plus the mandatory penalty assessments on each lab fee. (*People v. Terrell* (1999) 69 Cal.App.4th 1246, 1257; *People v. Martinez* (1998) 65 Cal.App.4th 1511, 1520-1522.)

The judgment must be modified, and the amended abstract of judgment must be amended, to include two \$50 lab fees and related penalty assessments for each lab fee.

#### C

In addition, the amended abstract of judgment includes a \$150 drug program fee (Health & Saf. Code, § 11372.7, subd. (a)) and related penalties. But the trial court did

not orally impose that fee, and the fee cannot be imposed unless the trial court found that defendant has the ability to pay the fee. (Health & Saf. Code, § 11372.7, subd. (b).) Accordingly, a judgment that does not include a drug program fee is not an unauthorized sentence; instead, we presume the trial court determined the defendant did not have the ability to pay the drug program fee. (*People v. Martinez, supra*, 65 Cal.App.4th at pp. 1516-1519.) The amended abstract of judgment must be corrected to omit the \$150 drug program fee and related assessments.

Having undertaken an examination of the entire record, we find no other arguable error that would result in a disposition more favorable to defendant.

#### DISPOSITION

The judgment is modified to impose a stayed parole revocation fine of \$500 payable on revocation of parole, an \$80 court security fee, and a \$60 court facilities assessment. The judgment is further modified to impose a \$50 laboratory fee plus applicable penalty assessments on each conviction. The judgment is affirmed as modified.

The trial court is directed to prepare a second amended and corrected abstract of judgment reflecting the judgment as modified and omitting the \$150 drug program fee and related assessments. The trial court shall forward a certified copy of the second amended abstract of judgment to the California Department of Corrections and Rehabilitation.

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MAURO, J.

We concur:

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RAYE, P. J.

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MURRAY, J.